GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 817/EL1/83/Elec. *Dated, Trivandrum, 26th February* 1983.

Notification No. 82/KL-LA/2/82 dated 7-2-1983 of the Election Commission of India is published.

By order,

J. S. JESUDHASAN,
Chief Electoral Officer and Special Secretary to Government.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001.

Dated, 7th February 1983.

NOTIFICATION

No. 82/KL-LA/2-82.— In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Kerala dated 26th October, 1982 in Election Petition No. 2 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present

THE HONOURABLE Dr. JUSTICE
T. KOCHU THOMMEN

Tuesday the 26th October, 1982/4th Karthika, 1904

ELECTION PETITION NO. 2/1982 AND CMP 21286 OF 1982

Petitioner:—

Eappen Varghese, Edathil Mandir,
Palluruthy, Cochin-5.
By Advs. M/s. S. Narayanan Poti and B.V. Deepak.

Respondents—

1. Sri T. P. Peethambaran Master, Thekkanedath, Palluruthy, Cochin-6.
2. Sri George Monikka, Sundarathara, Maradu P.O.
3. Sri Jose Padikkal, Chakkalakkal, Kumbalangi P.O., Cochin-7.
4. Sri Joseph Choorkulam, Choorakulath, Thevara, Cochin-13.
5. Joseph Repheal, Eledath Veedu, Mundam Veli P.O., Cochin.
6. Sri K. J. Petro Koyil Parambil Veedu, Andikadavu P.O., Cochin-7.
7. Sri Sebastine, Kochuparambil, Kannamali P. O., Cochin-8.

R1 by Advs. M/s. T.R. Govinda Warrier and N.N. Sugunapalan & T. K. Jayaram

This Election petition having been finally heard on 6-10-1982 and having stood over to this day for consideration the court delivered the following:—

JUDGMENT

The petitioner prays for a declaration that the election of the 1st respondent to the Kerala State Legislative Assembly from No. 74 Palluruthy Constituency was void and that the Petitioner has been duly elected. In the election held on 19-5-1982, the result of which was declared on the following day, the petitioner and the 1st respondent were the principal contestants. The petitioner was the candidate of the Kerala Congress (J) and the 1st respondent was the candidate of the Indian National Congress (S). The 1st respondent secured 37, 369 votes while the petitioner secured 37, 353 votes, the difference between them being 16 votes. There were 34 tendered votes.

2. The principal allegations of the petitioner are: 34 votes found in the ballot boxes of the various polling stations are invalid votes as they were cast by impersonators, and those votes ought to be discarded. Votes tendered by the genuine voters should be counted in favour of the candidates for whom they were marked. Serious mistakes and frraud had been committed in the counting of votes. The counting staff who were members of the N.G.O. Union, which was sympathetic to the Left Democratic Front ('L.D.F.') of which the 1st respondent's Party was a constituent, were sympathetic to the 1st respondent. Seating arrangements in the hall were poor and there was overcrowding; as a result of which counting was not done with the necessary

care. The total count of votes did not agree with the ballot paper account showing a discrepancy of 9 ballot papers. The votes were not properly tied up as a result of which the petitioner's bundles might have contained more than 50 votes. The petitioner "might have lost several of his votes by their being bundled as the 1st respondent's votes". There was pandemonium and confusion in the hall on account of the entry of unauthorised persons. The petitioner did not have a proper opportunity to watch the counting of postal as well as doubtful votes. Many valid votes of the petitioner were rejected as invalid votes while many invalid votes were counted as valid votes in favour of the 1st respondent. The petitioner was given only 5 minutes to prepare his application for re-count. The application was unjustifiably rejected. The Returning Officer ought to have ordered a recount of the votes. A fresh count of the total votes, inclusive of the tendered votes, but exclusive of the votes of the impersonators, would show that the petitioner has in fact secured larger number of votes than the 1st respondent.

3. These allegations are denied by the 1st respondent who alone has failed a written statement. He has stated that the petitioner's application for re-count was rightly rejected as it was frivolous and untenable. Persons who tendered votes are persons who has already voted. The tendered votes were not received from genuine voters. No mistake or fraud was committed by anybody. It is not true that the counting staff were sympathetic to the 1st respondent counting was done properly. All the candidates had sufficient opportunity to watch the sorting and counting.

4. In the presence of counsel on both sides and after discussing the same with them, the following issues were settled:—

1. Are the tendered votes polled in polling stations mentioned in paragragh 2 of the Election Petition polled by genuine electors?

2. Are these votes polled by the electors as tendered votes entitled to be counted as valid votes for the candidate or candidates in whose favour they were polled and the votes inserted in the ballot boxes by persons who earlier voted in their names liable to be rejected as invalid votes?

3. Whether the petitioner or the 1st respondent is found to have polled a majority of votes after taking into account the valid votes including the tendered votes and rejecting the invalid votes polled by the impersonators?

4. Was the counting of votes for No. 74 Palluruthy Assembly Constituency made in circumstances which prevented proper and errorless counting? Was the counting vitiated by fraud and/or mistakes as stated in paragraphs 3 to 7 and 9 of the Election Petition?

5. Was the Returning Officer justified in rejecting the request of the petitioner for a re-count of the votes? Is the petitioner entitled on the facts and circumstances to a re-count of the votes including the votes rejected as invalid?

6. Is the petitioner entitled to a declaration that the election of the 1st respondent is void and that the petitioner is duly elected?

7. To what reliefs the petitioner is entitled?

8. What is the order as to costs?

5. *Issue No.1.* One of the principal contentions of the petitioner is that 94 persons tendered their votes, in terms of Rule 42 of the Conduct of Election Rules, 1961, ("the Rules") at 23 polling stations. These persons, according to the petitioner, are the genuine voters, and their votes should be taken into account; while those who had earlier voted in their names and against their Serial Nos. in the electoral rolls are impostors, and therefore the votes of such impostors are liable to be discarded as invalid votes. This is what the Petitioner says:

> "It is submitted that those who gave the tendered votes in these polling stations were the genuine voters entered in the electoral rolls and in each and every one of these cases the persons who had voted in their names earlier there by constraining the real voter to cast a tendered vote, was an impostor and has managed dishonestly to cast a vote by impersonation. Each of these votes cast by the impersonator is invalid and has to be rejected as invalid votes".
> (Para 2 of the petition)

This was controverted by the 1st respondent in his written statement in the following words:

> "A few persons turned up at the above polling stations towards the close of the polling and applied for ballot papers representing themselves to be electors entitled to vote at the respective polling stations. It was seen that all those persons had already exercised their franchise earlier in the day. But they insisted on exercising their voting rights alleging that some other persons might have voted earlier in their names. It was in the above circumstances that tendered votes were received from them by the concerned Presiding Officers. (para 10.)

It may kindly be noted in this context that polling at every station was done in the presence of Election agents representing the various candidates

> "The electors assigned to each polling station were personally known to election agents. There was no challenge except in the

case of one or two voters made by any election agent regarding the identity of any voter, who voted at the polling stations where subsequently tendered votes were received. It is incorrect to say that tendered votes were received from 'genuine voters'. The petitioner has made a false claim that most of the tendered votes were received from electors who had voted for the petitioner. No instance of impersonation of any genuine voter was pointed out by any election agent. It is quite possible that tendered votes were made by persons who had already voted for the petitioner or other contesting candidates earlier in the day of polling. There is absolutely no material to substantiate the allegation made by the petitioner that there are invalid votes cast by impersonators".

(Para 11).

(emphasis supplied)

6. The stand thus taken by the 1st respondent in his written statement is that the tendered voters had already voted and therefore they were not genuine voters when they tendered their votes. It is not pleaded by him that the tendered voters are not the real voters. There is no challenge in the written statement against their identity It is significant that this averment in the written statement is in specific answer to the petitioner's plea in paragraph 2 of the petitioner that the tendered voters are the genuine voters. But in denying the genuineness of these voters the 1st respondent does not anywhere say that they were note genuine because they were not the same persons as the real voters. According to him they were the real voters wanting to vote a second time. It was on the basis of such averment that Issue No. 1 was raised.

7. The 1st respondent's counsel, Shri T.R. Govinda Warrier attempts to resile from the pleading in paragraphs 10 and 11 of the written statement. He says that reference to genuine voters in paragraph 11 is an alternative contention to the one raised in paragraph 10. Counsel says that in paragraph 10 the 1st respondent states that the tendered voters were those who had come a second time to vote. In paragraph 11, counsel says the 1st respondent pleads alternatively that they were not the same persons as the real voters. Shri S. Narayanan Poti points out that this interpretation of paragraph 11 cannot be accepted as that paragraph also emphasises:

> "It is quite possible that tendered votes were made by persons who had already voted for the petitioner or other contesting candidate earlier in the day of polling."

This is how the parties understood their respective position at the commencement of the proceeding.

8. However, from the nature of the cross examination of the witnesses who claim to have tendered their votes, it would appear that the 1st respondent

has shifted his stand. On the basis of the averments contained in the petition and the written statement and in the light of the relevant issue, the tendered voters who have deposed as P. Ws. 3 to 13, 16 to 32, 37, 38 and R.W. 1 have been examined on behalf of the petitioner with a view to proving two important points: (1) their identity; and (2) the fact that they did not vote earlier. All question put to them in corss-examination have been directed towards the first point along. No attempt has been made by the 1st respondent to show that these witnesses had voted earlier. I must necessarily therefore come to the conclusion that, in so far as the tendered voters are concerned, there is no evidence whatever to suggest that they had voted earlier. In fact the evidence is all to the contrary. Then the only other question is whether their identity has been established.

9. Shri Narayanan Poti submits that, in the light of 1st respondent's pleas, it has to be taken that he has admitted the identity of the tendered voters I do not however wish to conclude this point solely on the basis of plea. I would therefore examine the evidence to ascertain whether the petitioner has discharged the initial burden of establishing their identity and, if so, whether such evidence has been demolished in cross-examination.

10. Out of the 34 persons who are alleged to have tendered votes, only 31 persons have been examined. They are P.Ws. 3 to 13, 16 to 32, 37, 38 and R.W.1. One tendered voter, I am told by petitioner's counsel, cannot be traced at all, and no steps are therefore sought to be taken towards that end. In respect of two persons Gopi Narayanan (of P.S. 36) and Padmanabhan Velu (of P.S. 26) who are alleged to have tendered their votes, warrant has been issued for their appearance. So far they have not appeared and warrant has been returned saying that they cannot be traced. Of the 31 persons who were examined, one person, that is, Rosa Peter (P.W. 38) has denied that she tendered her vote. She denies any knowledge of the list of tendered votes of P.S. No. 30 shown to her or the finger print appearing in it which she says is not hers. That finger print, for the purpose of identification, was marked as Ext. XI. A specimen thumb impression was taken for the purpose of comparison marked as Ext. C4. Exts. XI & C4 were handed over by my order dated 30-9-1982 in C.M.P. No. 21119 of 1982 to P W. 40 who is the Finger print Expert, Crime Branch C.I.D. for photographic enlargement of the impressions. He has now returned Exts. XI and C4 stating that he is not able to get them enlarged for want of a competent photographer. The identity of P W. 38 remains in doubt.

11. Accordingly I shall deal with the evidence of 30 out of the 31 witnesses examined on the question of tendered votes. Of these witnesses, 14 stated thay tendered their votes in favour of the 1st respondent. They are P.Ws. 4, 5, 6, 7, 8, 18, 21, 22, 23, 24, 25, 27, 31 and R.W.1. The 1st respondent's counsel Shri Govinda Warrier submits that in view of the fact that these witnesses had tendered their votes in favour of the 1st respondent, his client does not dispute their identity and has no objection to tracing out the votes cast earlier by other persons in their names and against their Serial. Nos. with a view to discarding them. Accordingly

I hold that these witnesses are genuine voters. The relevant particulars for tracing the votes of persons who had earlier voted in the names of these witnesses who tendered their votes for the 1st respondent are:

Name of tendered voter			Exts	Sl. No. of tendered ballot paper	Sl. No. of ballot paper issued to the person who voted earlier
(1)			(2)	(3)	(4)
1.	P.W.4	Chinna Joseph	P4, P4 (a)	099666	023186
2.	P.W.5	Sugunan Shanmughan	P4, P5	099665	023250
3.	P.W.6	Venkitachala Chettiar	P4, P6	099664	023269
4.	P.W.7	Kausalya Vasu	P4, P7	099663	023367
5.	P.W.8	Lucy Prestina	P4, P8	099662	023391
6.	P.W.18	Thresia Jacob	P11, P18	099594	012277
7.	P.W.21	Joseph Joseph	P21, P21	099618	015878
8.	P.W.22	Xavier Augustine	P22, P22 (a)	099845	019736
9.	P.W 23	Jainy Hassan	P23, P23 (a)	026489	025725
10.	P.W.24	Subaida Khalid	P24, P24 (a)	034459	034036
11.	P.W.25	Gopalan Ittaman	P25, 25 (a)	039027	..
12.	P.W.27	Masthan Khan Ussankhan	P25, P27	039025	..
13.	P.W.31	Peter Franklin	P12, P31	099854	060386
14.	R.W.1	Aysha Saidu	R4, R4 (a)	099709	034531

12. The persons who tendered votes in favour of the petitioner are: P.Ws. 3, 9, 10, 11, 12, 13, 16, 17, 19, 26, 28 32 and 37 of these persons the petitioner admits that P.W.3 is not a genuine voter. In the circumstances petitioner's counsel Shri Poti says that no order needs to be made in respect of P.W.3. This is recorded. I shall deal with the other witnesses. They are:

13. *P.W.9. Kuttan Nair*: This witness says that he belongs to Thekke Kalasseri House, Thevara, Cochin-17. He is voter No. 537 of Polling Station No. 9. He says that when he went to vote he was told by the concerned officer that someone else had voted in his name. He insisted that nobody else could have voted in his name for he was the real voter. He was allowed to tender his vote. He voted for the petitioner. There is nothing to discredit this witness except the technical contention that there is some discrepancy in the spelling of his house name as seen in Form 15 and in the Voter's List. In Form 15 it is spelt "Thekkekalassery" while in the voter's list it is "[illegible]". The witness states in cross-examination that he lives in Perumanoor whereas Polling Station No. 9 is in Thevara. In re-examination he says that he lives just behind the Perumanoor Police Station.

Summons was issued to this witness, but it could not be served on him as he was not seen in the house. However the endorsement of the process server is that the witness could not be seen in the house. But the house was correctly identified as stated by the witness.

14. The fact that the house name is spelt differently in Form 15 from what is seen in the voter's list can be easily attributed to the phonetic distinction owing to the variation in language. I do not believe that the witness has committed any fraud in stating his house name. The summons was taken to his house. There is no case that it was not the house of the witness. It is not disputed that the witness was right when he says that he lives behind the Perumanoor Police Station. It is common knowledge that although places behind the Perumanoor Police Station fall within the Thevara Division, these places are commonly referred to either as Perumanoor or Thevara. It is quite possible that what the witness has referred to as Perumanoor is actually located within the Thevara Division and that is why he is listed at Thevara Polling Station. The witness has not been cross-examined on this point. Nothing has been brought out to discredit this witness. In my view his identity has been established.

15. *P.W. 10 Summy Abel*: This witness says that when he went to vote he found that somebody else had already voted in his name. But he had not voted earlier. He is a voter in Palluruthy Assembly Constituency, at Polling Station No. 12. His roll No. is 329. He tendered his vote in favour of the petitioner. The 1st respondent has not been able to create any doubts as to the identity of this witness. In the circumstances I am of the view that this witness is the genuine voter.

16. *P.W. 11 Xavier Joseph*: This witness claims to be a voter at Polling Station No. 14 with Serial No. 816. When he went to vote he was told that somebody else had voted in his name. Accordingly he tendered his vote. He voted for the petitioner. His address in Ext. P11 is seen as "1010 Mappilasseril". But in his cross-examination he gives his house number as "255 at Koovvappadam". This he has explained in his re-examination. He says that house No. 255 is his tarwad house. But he resides at Mappilasseril, I am of the view that the discrepancy has been properly explained by this witness. In the circumstances he is a genuine voter.

17. *P.W. 12 Chacko Joseph*: This witness has given his name as Chacko Joseph. Summons went to him in that name. His name in Ext. P12 also is Chacko Joseph. He accepted summons by signing his name as Joseph. In cross-examination he says that his real name is Chacko Joseph, although he later says that when he went to vote he told the officer that he was really Joseph but someone has already voted in the name of Joseph. He tendered his vote in favour of the petitioner. I see a correction in Ext. P12. His name was first written as Joseph Chacko and later corrected as Chacko Joseph. In Ext. R3 which is the Voter's List the name of the voter against Serial No. 681 is shown as Joseph Chacko. In the circumstances I am of the view that the identity of this witness has not been established.

18. *P.W.* 13. *Sebastion Raphael:* This witness claims to be a voter of Polling Station No. 69 with Serial No. 648. He had not voted. But he was told that somebody else had voted in his name. Accordingly he was allowed to tender his vote. He voted in favour of the petitioner. There is nothing in the cross-examination to raise any doubt about the identity of this witness. In the circumstances I hold that P.W. 13 is a genuine voter.

19. *P.W.* 16. *Kochuthresia George:* George is the name of her husband. She claims to be a voter at Polling Station No. 20 with Serial No. 285. She had not voted, but she was told that someone else had voted, in her name. Accordingly she tendered her vote. She voted for the petitioner. There is no serious cross-examination of this witness. I am of the view that the identity of this witness has been established.

20. *P.W.* 17. *T.K. Dinesan:* He claims to be a voter at Polling Station No. 31. His Serial No. is 259. He had not voted. But when he went to vote he was told that somebody else had voted in his name. He tendered his vote in favour of the petitioner. There is no serious cross-examination of the witness. His identity is, in my view, well established.

21. *P.W.* 19. *Annie Joseph:* She claims to be a voter at Polling Station No. 16. Her Serial No. is 792. She had not voted. But she was told that somebody else had voted in her name. She tendered her vote in favour of the petitioner. There is no serious cross-examination of this witness also. Her identity is in my view, well established.

22. *P. W.* 26. *Antony xavier:* This witness says that he is a voter at Polling Station No. 43. His Serial No. is 293. When he went to vote for the first time he was told that he could not vote as somebody else had voted in his name. When he insisted that he was the genuine voter he was allowed to tender his vote. He voted for the petitioner. His cross-examination is absolutely meagre. Nothing has been brought out to discredit him. It is true that he admitted that his brother was a polling agent of the petitioner at the very same polling station (i. e. No. 43). Shri Warrier suggests that personation of this witness could not have taken place if his own brother was a polling agent. It is true that he could not be personated in the presence of his brother. It is however quite possible that the brother was not always present at the polling station and that someone had personated the witness in the absence of his brother. There is nothing to indicate that he had voted earlier. In the circumstances the mere fact that the witness's brother happened to be a polling agent is not a sufficient reason to discredit the witness and disbelieve his identity which is not otherwise discredited in cross-examination. In the circumstance I am of the view that this witness is a genuine voter.

23. *P.W. 28. Sobhan Viswanathan*: He claims to be a voter at Polling Station No. 44. His Serial No. is 273. He could not vote. He was told that somebody else had voted in his name. But he insisted that he had not voted so far. Accordingly he was allowed to tender his vote. He voted for the petitioner. There is no serious cross-examination of this witness. Accordingly his identity is, in my view, well established.

24. *P.W. 32. George Paily*: He claims to be a voter at Polling Station No. 78. His Serial No. is 684. When he went to vote for the first time he was told that somebody else had voted in his name. Accordingly he tendered his vote. He voted for the petitioner. The only criticism against this witness is that there is some confusion about his signature. He says in cross-examination. "Ext. P. 32-ൽ ഞാൻ ഒപ്പിട്ടിട്ടില്ല P. S.-ൽ വെച്ച് ഞാൻ ഒപ്പിട്ടു". This is not a contradiction, but only a slip. He has in fact put his signature in Ext. P. 32 and he says so in re-examination. He says that in Ext. P 32 he wrote his name and then put his signature in Ext. P 32 and he says so in re-examination. He says that in Ext. P. 32 he wrote his name and then put his signature. This is clear from Ext. P32. His name appears in column 5 and then his signature. His name and signature appear in the same form in Ext. C2 which is the summons issued to him by this Court. His signature accepting the summons is marked as Ext. C2 (a). That signature tallies with the signature in Ext. P32 (a). In the circumstances I am of the view that the identity of this witness is well established.

25. *P.W. 37. Bavakunju Sainaba*: He says that he is a voter at Polling Station No. 98. His Serial No. is 80. His full name is Thekke Kanavath Bavakunju Sainaba. Bavakunju is his name. Sainaba is the name of his mother. When he went to vote for the first time he was told that somebody else had voted in his name. He was allowed to tender his vote. He voted for the petitioner. His wife's name also is Sainaba. She had already voted in her own right. There is no doubt on that score. The only criticism against this witness is that in cross-examination he says that his house in Kanavath and there are three persons residing in that house. They are himself, his mother and his wife. All of them have votes. In chief he says his house is Thekke Kanavath. In the Voter's List only two persons are shown to have votes in that house. I do not think that this discrepancy is very material. It has not been denied that his name is Bavakunju and he is the son of Sainaba. His house name, as shown in the Voter's List, is Thekke Kanavath. In the circumstances I am of the view that the identity of this witness has been well established.

26. In the light of the above discussion, I hold that the persons whose details are given below are genuine voters and they have voted for the petitioner. The relevant particulars for tracing the votes of persons who had earlier voted in the names of these witnesses are :

Name of tendered voter	Exts.	Sl. No. of tendered ballot paper	Sl. No. of ballot paper issued to the person who voted earlier
(1)	(2)	(3)	(4)
1. P.W. 9 Kuttan Nair	P9, P9 (a)	099568	007134
2. P.W. 10 Summy Abel	P10, P10 (a)	011291	..
3. P.W. 11 Xavier Joseph	P11, P11 (a)	099593	012650
4. P.W. 13 Sebastian Raphael	P13, P13 (a)	099857	061176
5. P.W. 16 Kochuthresia George	P14, P15	099633	..
6. P.W. 17 Dinesan T.K.	P16, P17	099684	027599
7. P.W. 19 Annie Joseph	P19, P19 (a)	099611	014310
8. P.W. 26 Antony Xavier	P25, P26	039026	..
9. P.W. 28 Sobhan Viswanathan	P28, P28 (a)	099736	039341
10. P.W. 32 George Paily	P32, P32 (a)	099890	068981
11. P.W. 37 Bavakunju Sainaba	P33, P33 (a)	099991	086354

27. In addition to the above mentioned persons, the following two persons are also genuine voters and the votes cast earlier in their names by others have to be traced. Their particulars are:

28. *P. W.* 20. *Joseph Chacko*: This witness voted for the 4th respondent. He claims to be a voter at Polling Station No. 18. His Serial No. is 492. When he went to vote he was told that somebody else had voted in his name. Accordingly he tendered his vote. He stated in his chief-examination that he voted for the 1st respondent. But when the tendered ballot paper was opened it was found that he had actually voted for the 4th respondent. There is no serious cross-examination of this witness. Although this witness could not recollect the name of the person for whom he voted, in the absence of any serious challenge in the cross-examination against his identity, I am of the view that he is the genuine voter and the person who earlier voted in his name and against his Serial No. was not the real voter.

29. *P. W.* 29. *Saleela Ramachandran*: She claims to be a voter at Polling Station No. 44. Her roll No. is 91. When she went to vote she was told that somebody else had voted in her name. She was allowed to tender her vote. She said she voted for the 1st respondent. But when the ballot paper Ext. P29 was opened it was found that she had actually voted for the 4th respondent. There is no serious cross-examination of this witness. Notwithstanding the fact that she did not recollect the person for whom she had actually voted, her identity does not seem to be in doubt. Accordingly I am of the view that she is a genuine voter and the person who had earlier voted in her name was not the real voter.

30. The relevant particulars for tracing the votes of persons who had earlier voted in the names of these two witnesses who tendered their votes for the 4th respondent are:

	Name of tendered voter	Exts.	Sl No. of tendered ballot paper	Sl. No of ballot paper issued to the person who voted earlier
	(1)	(2)	(3)	(4)
1.	P. W. 20 Joseph Chacko	P. 20, P20(a)	099619	015923
2.	P. W. 29 Saleela Ramachandran	P 23, P29	099735	—

31. *P. W.* 30 (*Sumathi Natesan Pillai*) is a voter of Polling Station No. 47 Her Serial No. is 304. She tendered a blank vote. She has not been cross-examined. Since her identity has not been questioned, Shri Warrier admits that the person who voted earlier in her name was not a genuine voter and his vote is liable to be discarded. The relevant particulars regarding her blank vote for the purpose of tracing the vote of the person who had earlier voted in her name are:

Name of tendered voter (1)	Exts. (2)	Sl. No. of tendered ballot paper (3)	Sl. No. of ballot paper issued to the person who voted earlier (4)
P. W. 30 Sumathi Natesan Pillai	P 30, P30 (a)	099758	042290

32. In this ennneetion I must refer to an argument urged before me by Shri, Warrier. He sayed that in the absenee of evidence that the witnesses have answered proper question put to them by the Presiding Officer, they cannot be treated as genuine voters. He refers to Parker's Election Agent and Returning Officer, 4th Edn., P. 332, where it is stated :

> "The tender, does not seen to be complete until the voter has answered the questions and taken the oath, and the onus appears to be on him to demand that they be put and administered.....................
>
> The onus does not seen to be upon the Presiding Officer, and cleatly it is not upon the polling agents of either candidate..............."

This observation by the learned author is based on the peculiarity of the English law. No such oath is required under our law. Even according to English law, the "tendered ballot paper will be counted even if the Presiding Officer does not comply with all the statutory provisions regarding tendered ballot papers.............." (Halsbury's Laws of England, 4th Edn., Vol. 15 P. 504, para 923). There is no case that the persons who tendered votes failed to answer the questions put to them. All of them, whose identity I have accepted, have stated in their evidence that, when they were told by the eoncerned officer that their votes had been already east, they insisted that they had not voted earlier and they were the genuine voters. Their eontentions were accepted by the officer when he allowed them to tender their votes. In this Court all of them maintained that they were the gennine voters and they were prevented from exercising their votes in the normal fashion because others had been stated to have voted in their names. It was in such circumstances that they had to tender their votes.

33. I am accordingly of the view that P. Ws, 4. 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 20, 21, 22, 23. 24, 25. 26 27, 23. 29, 30, 31, 32, 37 and R. W. I. are the genuine voters. Counsel on both sides agree that once the tendered voters are identified and accepted as genuine voters the votes east by others in the names of the genuine voters must necessacrily be discarded by deducting them from the total votes of the eandidates for when they were cast; and likewise the genuine tendered votes should be counted to the credit of the candidate for whom they were marked. This is indeed the correct position in law,

(*See* **Dr. Vilfred D.Souza) Francis Mening Jasme Ferrao** (1977) I. S. C. 396). According to Halsbury's Law of England, "A vote recorded by one person in the name of another who is on the register will be struck off whether the actual offence of personation is committed or not," (4th Edn., Vol. 15 P. 504, Para 928). This means that, whether or not the offence of personation had has been proved, the vote cast by one person in the name of another is void. Whatever that person may be called in law and whether the necessary ingredients of the offence are present or not, his vote is not the vote of a genuine voter and it has to be struck off. I shall therefore, for the purpose of this case, treat all those persons who had earlier voted in the names of the genuine tendered voters, as if they were "imposters" or "impersonators", and refer to them as such. Accordingly I hold that the votes of the "impostors" are liable to be discarded, and the genuine tendered votes are entitled to be counted in favour of the intended candidates.

34. In the light of the evidence discassed above, I directed the Deputy Registrar (Judicial) by my order dated 1-10-1982 to trace the ballot papers marked by the impostors in the presence of the parties and their connsel, and submit a report as to the candidates for whom such persons voted.

35. The Deputy Registrar has now submitted his report dated 4-10-1982 in which he says that, except in regard to Gopalan Ittaman (P. W. 25), the votes cast by impostors in the names of the aforesaid tendered voters have been traced. He has mentioned the candidates for whom those votes were cast...
As regards Gopalan Ittaman, (P. W. 25), there is no trace of any other person having voted in his name or against his Serial No. 176 of P. S. 43, although this witness was not allowed to vote in the normal course, but had to tender his vote. Both sides agree that at the time of the scrutiny no counterfoil was seen to have been issued against that serial number in P. S. 43. In the circumstaners, while the tendered vote of P. V. 25 has to be counted, there is no invalid votes to be discarded in its place. Shri Narayanan Poti contends that a tendered vote cannot he reckened unless an imposter had already voted in the name of the genuine voter, and that vote has been traced and discarded. I do not agree. A tendered vote has to be counted to the credit of the intended candidate if the voter was mistakenly or unjustifiably prevnted from voting otherwise than by tender, and none had earlier voted in his name, P. W. 25, as I have found, is a genuine voter who had not voted earlier. His genuine vote, which is the only vote he has cast, happens to be a tendered vote for no falult of his, and that vote is perlectly qualified to be counter according to its tenor.

36. The names of the tendered voters, the candidates for whom they have tendered their votes and the candidates in favour of whom the imposters had earlier cast their votes are, with the aid of the Deputy Registrar's report, stated bereunder :

		Name of tendered voter	Sl. No. of tendered ballot paper	Name of candidate for tendered voter voted	Sl. No. of ballot paper issued to the imposter	Name of candidate for whom the imposter voted
		(1)	(2)	(3)	(4)	(5)
1	P.W. 4	Chinna Joseph	099666	R1	023186	Petitioner
2	P.W. 5	Sugunan Shannughan	099665	R1	023250	R1
3	P.W. 6	Venkitachala Chettiar	099664	R1	023269	R1
4	P.W. 7	Kausalya Vasu	099663	R1	023367	R1
5	P.W. 8	Lucy Prestine	099662	R1	023391	R1
6	P.W. 9	Kuttan Nair	099568	Petitioner	007134	R1
7	P.W. 10	Summy Abel	011291	Petitioner	010147	Petitioner
8	P.W. 11	Zavier Joseph	099593	Petitioner	012650	R1
9	P.W. 13	Sebastian Raphael	099857	Petitioner	061176	Petitioner
10	P.W. 16	Kochuthresia Gerrgu	099633	Petitioner	018085	Petitioner
11	P.W. 17	Dinesan, T. K.	099684	Petitioner	027599	R1
12	P.W. 18	Thresia Jacob	099594	R1	012277	Petitioner
13	P.W. 19	Annie Joseph	099611	Petitioner	014310	R1
14	P.W. 20	Joseph Chacko	099619	R4	015923	R2
15	P.W. 21	Joseph Joseph	099618	R1	015878	R1
16	P.W. 22	Zavier Augustine	099645	R1	019736	Petitioner

		(1)	(2)	(3)	(4)	(5)
17	P.W. 23	Jainy Hassan	026489	R1	025725	R1
18	P.W. 24	Subaida Khalid	034459	R1	034036	R1
19	P.W. 25	Gopalan Ittaman	039027	R1	..	(untraced)
20	P.W. 26	Antony Xavier	039026	Petitioner	038261	R1
21	P.W. 27	Masthankhan Ussankhan	039025	R1	038646	R1
22	P.W. 28	Sobhan Viswanathan	099736	Petitioner	039341	Petitioner
23	P.W. 29	Saleela Ramachandran	099735	R4	039110	Petitioner
24	P.W. 30	Sumathi Natesan Pillai	099758	(blank)	042290	R1
25	P.W. 31	Peter Franklia	099854	R1	060386	R1
26	P.W. 32	George Paily	099890	Petitioner	068981	R1
27	P.W. 37	Bavakunju Sainaba	099991	Petitioner	026354	Petitioner
28	R.W. 1	Aysha Saidu	099709	R1	034531	Petitioner

The votes of the imposters are discarded. The tendered votes are counter in favour of the candidates for whom they have been marked. Accordingly the 1st respondent's lead over the petitioner stands reduced from 16 votes to 13 votes. It is so held. This being the margin between them, the result of the 1st respondent's election will not be materially affected even if the two tendered voters, Gopi Narayanan of P.S.36 and Padmanabhan Velu of P.S.26, on whom warrant could not be served are ultimately traced and their votes are found to have been cast for the petitioner and are thus credited to him after discarding the votes of these who had personated them. In such eventuality—a supposition for which there is no evidence—the 1st respondent's lead can at worst be reduced to 9, assuming of course that the impostors had voted for him. As for Rosa Peter(PW38) her vote cannot be counted for any one on her own evidence even if her identity is finally established by comparison of her fingerprints. She has categorically denied having tendered any vote. Appreciating this position, Shri Poti rightly submits that the petitioner has no further evidence to adduce. This is recorded.

37. In the light of what I have stated above, I answer *Issue No.1* as follows P.Ws.4 to 11, 13, 16 to 32, 37 and R.W.1 are genuine electors. All these persons(with the exception of P. W. 30, whose vote being blank is invalid) tendered valid votes.

38. *Issue No. 2.* For the reasons stated by me under Issue No.1 the votes tendered by P. Ws. 4. to 11, 13, 16 to 29, 31, 32, 37 and R. W. 1 are entitled to be counted as valid votes for the respective candidates in whose favour they have been tendered and the votes inserted in the ballot boxes by the impostors in the names of these persons are liable to be rejected as invalid votes. Although P. W. 30 tendered an invalid vote, her identity has been established. Accordingly the vote of the person who voted in her name is that of an imposter and it must therefore be discarded as a void vote. The issue is found accordingly.

39. *Issue No.3* In the light of my finding under Issue No. 1, the petitioner retains a majority of 13 votes.

40. *Issue No.4* It is alleged by the petitioner that the counting hall was overcrowded with furniture and people. There was hardly any space in the hall to move about. Apart from the officers and the counting agents, there were a number of unauthorised people in the hall. The counting was done in a great hurry. The Agents could not properly watch the correctness of the sorting, counting and bundling on account of the speed at which and the manner in which it was done, and also on account of the congestion in the hall. It is also alleged that the counting staff were baised in favour of the 1st respondent on account of their political affiliation. The

petitioner has not given the material particulars concerning these allegations. He has not averred as to who were the persons in the hall without passes, except to say that a large number of Marxists came into the hall;—the name or other particulars of a single person is not stated in the petition: one wonders how he even knew they were Marxists:—how long they remained in the hall, which were the tables at which the counting was done improperly or in a great hurry; whether any specific complaint had been made to that effect by any counting agent to the Returning Officer or to the petitioner to the Chief Election Agent of the petitioner, and, if so, the names of those counting agents, their tables, and the particulars of the polling stations from which those votes had come; the names of the members of the counting staff who are members of the N.G.O. Union and the particular N.G.O. Union the petitioner has in mind. These material facts are not stated in the petition.

41. In his evidence as P.W.1 the petitioner says that the counting, which should have commenced at 8.00 a.m started only at 9.30 a.m., as a result of which the staff were in a hurry to finish the counting. But he did not make any complaint to the Returning Officer or anybodyelse regarding the delay or the subsequent hurry. Lack of seating arrangements made counting extremely difficult. About this matter also, he had not made any complaint. None of these matters finds a place in Ext.R1 application for recount. The Returning Officer, the Assistant Returning Officer and the other officers along with the candidates and the election agents sat on the platform. In the hall there were 15 counting tables in three rows. Each table had benches on either side for the counting assistants and the agents to sit. There was also a chair for the counting supervisor. There were two trays on the table. Into one tray the votes brought in the ballot boxes were emptied. The agents were shown the ballot boxes as and when they were emptied to make sure that that no vote remained in the boxes. They were sorted and counted in the other tray. Since the tray was not large enough, vote fell out of it while they were emptied out of the boxes. However, he has no case that any single vote was lost.

He says that the trays were kept on the laps of the counting officers and that the votes were counted very quickly as if they were currency notes. In the petition he says that bundling was done on the laps of the officers ; and there is no reference to the trays being on the laps. Whatever that be, he did not give any complaint in writing about the votes being counted and bundled like currency notes on the laps of the officers. At tables 4 and 10 a bundle each was checked when the agents suspected that they were not tied up properly. It was found that each of them had 5 votes in excess of the usual number of 50 votes. These bundles belonged to the petitioner. The excess votes were immediately removed and bundled separately. The agents did not specifically point out any other bundle to be checked. None

had a case at that time that any other bundle required checking on the ground that it contained more than 50 votes of the petitioner, or that the petitioner's votes had been tied up in the wrong bundles. In cross-examination P. W. 1 admits that he was unaware of any irregularity until after the counting was over as his agents did not report to him earlier. That is the reason why he did not alert the Returning Officer to any irregularity then and there. It is unbelieveable that if irregularity of such a serious nature had been taking place during the counting, his agents would have failed to report to him immediately, especially when the race between the two principal rivals was neck to neck.

42. P. W. 1 says that on the afternoon Shri P. C. Chacko and a number of Communist Party workers entered the hall making it even more overcrowded and the counting more difficult. His complaint was not heeded. He however admits that Chacko left the hall immediately, but his companions about 100 in number, remained in the hall.

43. Surprisingly he forgot to mention Chacko's name in the petition. Nor is he in a position to recollect the name of a single persons who came in with Chacko. He further admits that policemen had been on duty outside the hall at its entrance. He made no written complaint about the persence of unauthorised persons in the hall. P. W. 1 further says that the counting staff were baised in favour of the 1st respondent on account of their political affiliations, but he does not give any particulars of the counting staff who were alleged to be members of the N. G. O. Union. He only repeats what he has stated in the petition. He does not say which N. G. O. Union he has in mind, although he says he is aware that there are more than one N. G. O. Union. He has not produced any evidence to establish his vague allegations that the members of the counting staff belonged to the N. G. O. Union. He has not made any attempt to summon the Secretary of the particular N. G. O. Union to produce the membership register which could have thrown light on the Union membership of the counting staff.

44. P. W. 1 further contends that he had no opportunity to watch the scrutiny of doubtful votes or the counting of postal votes. This is unbeliveable for such scrutiny and counting had been done in his very presence by the Returning Officer (P.W. 15) on the platform. The evidence of the officer on the point has not been challenged. In fact the petitioner admits in his cross-examination that the doubtful and invalid votes were scrutinised by the Returning Officer on the platform in the presence of the candidates and their Chief Election Agents. The petitioner and his agent were on the platform. He did not at any time dispute the decisions of the Returning Officer as regards these votes as and where they were taken. P. W. 1 then refers to the difference between the ballot paper account contained in Form 16 Part 1 and the actual count of votes showing a discrepancy of 9 votes. This is a matter to which I shall revert later. P. W. 1 further complains that he was not given sufficient time to fills his application for re-count in writing. The Returning Officer gave him only 5 minutes.

Ext. R1 is his application and Ext. R2 is the order of the Returning Offier (PW.15) rejecting his request. The evidence of P. W. 15 will show that the petitioner was given all the time that he wanted to submit his application.

45. P.W. 2 was one of the counting agents of the petitioner at table No. 12. He says that at the time of sorting two or three ballot papers of the petitioner went into the compartment of the 1st respondent. They were immediately retrieved. Although he suspects that more votes would have gone into the compartment of the 1st respondent he is not in a position to assert the same and does not give any detail. He in fact admits that it is only his surmise. (   ). He never brought this fact to the notice of the petitioner or the Returning Officer at the relevant time. He says that P. C. Chacko was in the counting hall for about 5 minutes. He was accompanied by a 100 people. Policemen were at the main entrance to the compound and also on the varandah. He admits that people without passes were not allowed to enter the hall. He says that he cannot say which counting officers belonged to the N. G. O. Union that was sympathetic to the Marxist Party. He says that the counting supervisors refused to resolve disputes about invalid votes. This contention has no merit as it is the responsibility of the Returning Officer to resolve disputes about such votes, and not that of the counting officers. He has refers to a discrepency of one vote at his table, and says that the counting officers did not re-check the ballot papers, despite the discrepancy. He is not in a position to say the name or number of the polling station in regard to which the discrepancy arose. Significantly enough he did not bring this fact to the notice of the petitioner or the Chief Election Agent or the Returning Officer at the relevant time although they were all present in the hall. The evidence of this witness does not carry conviction. In this connection the evidence of the Returing Officer (P.W.15) is significant. He says that wherever there was a discrepancy, strict instruction had been given to the counting supervisor to re-check the votes. Each time discrepancy was noted while filling up Part II of Form 16, the Returning Officer's assistant asked the counting supervisor concerned the relevant questions about re-checking. No one had made any complaint on this matter. I shall revert to this aspect later.

46. P. W. 14 was the counting agent of the 7th respondent at table No. 4. He admits that he was there only to look after the interest of the petitioner and not interest of his own principal. He saw at his table one bundle of the petitioner containing 55 votes. He pointed out the excess votes to the counting supervisor. The mistake was immediately corrected by removing the 5 votes from that bundle. He has no case that any other bundle was wrongly tied up. The witness does not seem to remember how many tables there were in the counting hall or how many counting agents his principal, the 7th respondent, had. He also does not know how many agents the petitioner had. He does not know how many votes his principal received. He says that he was concentrating on the petitioner's votes. He says that

P. C. Chacko came into the hall with a 100 people. Chacko remained in the hall for about 15 minutes. He contradicts the petitioner who says that Chacko left the hall immediately after coming into it. He also contradicts P. W. 2 who says that Chacko remained in the hall only for about 5 minutes These witnesses speak differently as regards the exact duration of Chacko's presence in the hall.

47. P.W. 35 was the counting agent of the petitioner at table No. 10. He speaks of one of the bundles at his table containing 5 excess votes. The mistake was immediately corrected. This witness says that among the petitioner's agents only one person was in a position to sit on the bench. No other witness speaks to that effect. He further says that the counting officers sat on the benches on either side of the counting table while the counting agent sat on the chair. He contradicts every other witness on this point. He says that Chacko came into the hall and stayed there for only two or three minutes. He was accompanied by 50 Marxist Party members. He is however not in a position to recollect the name or other particulars of any one of them. His evidence appears to be totally unreliable.

48. P. W. 36 is the President of the Maradu Panchayat. He was the counting agent of the 2nd respondent at table No. 15. Unlike P. W. 35 he agrees with the other witnesses that the counting agents sat on the benches and the Supervisor sat on the chair at each counting table. He says that there was a deficiency of one vote. But he is not in a position to say which is the polling station in regard to which the discrepancy was noticed. His request for re-check was not heeded by the counting supervisor. But he did not bring this fact to the notice of the petitioner or the Returning Officer at the time when the discrepancy was noticed. He says that at about 3.30 p. m. a number of people without any control rushed into the hall. (യാതൊരു നിയന്ത്രണവുമില്ലാതെ തള്ളിക്കയറി). Chacko was one of them. Chacko talked to the 1st respondent for about 10 minutes. When he left, others who came with him did not go. His reference to Chacko being in the hall for 10 minutes is an improved version. Although he was the agent of the 2nd respondent, he actually worked for the petitioner and therefore he was watching the counting of the petitioner's votes. He aloso says that the counting commenced only at about 9.30 a.m. In cross-examination he says that about 100 people rushed into the hall. This is incredible.

49. P. W. 33 is the Assistant Commissioner of Police. He was on duty at the time of counting. He did not receive any complaint about any pandemonium or disorderly behaviour in or near the hall. He did not notice any disturbance. Nobody was allowed to block the window of the counting hall opening to the verandah. Two or three policemen were on duty on the verandah. P. C. Chacko came into the hall, and left immediately. He says in his chief examination that three or four people came with him. In his cross-examination he mentions only two or three persons who accompanied Chacko. All of them left the hall immediately.

He says that there were about 150 people in the hall. He is not in a position to say whether any one of them did not have a pass. This witness who is a responsible police officer on duty at the relevant time contradicts P.Ws. 1,2,14,35 and 36 as regards the number of persons who accompanied Chacko into the hall and the duration of their presence in the hall. His evidence shows that counting was done in a quite and peaceful atmosphere.

50. PW. 39 is the Sub Inspector of Police, State Police (Special Branch, C.I.D.). He says that he saw P.C. Chacko on the verandah with some companions. But he did not notice Chacko getting in to the hall. He also did not notice any disorderly conduct on the part of anybody. There were policemen on duty.

51. P. W. 34 is an Assistant Engineer at Vyttilla Block. He was the counting supervisor at table No. 13. He says that the counting started at 8 or 8.15 a.m. This evidence contradicts what is stated by the petitioner and his supporting witnesses. He says that at every table there was a bench reserved for the agents to sit. Four or five agents could sit on that bench. Some were standing. He did not notice Chacko in the hall at any time. There was no hindrance to the discharge of his duties. Counting proceeded properly and regularly at his table and there was no complaint about any irregularity there. He does not speak of irregularity at any table. There was enough space for two persons to pass through between tables. The agents found it more convenient to stand and watch the sorting and counting. That accounts for some of the agents standing while others were sitting. Some persons sat for a while and then stoods for a while. Occasionally he himself stood during counting with his chair folded up. The evidence of this disinterested witness does not support the petitioner's allegations about mistakes or irregularities in counting.

52. P. W. 15 is the Returning Officer. He was in charge of the counting. He says that nobody complained to him about over crowding in the hall. There was enough space to move around. The tables were put in three rows. There was a bench on either side of each table and a chair for the supervising officer. The furniture in the hall caused no obstruction. The counting commenced exactly at 8 a. m. There was only one entrance to the hall. There was a policeman on duty at the entrance. The sorting and counting trays were sufficiently large. Nobody had complained to him about the size of the trays or the manner of counting. There was enough furniture for the counting staff and agents to sit comfortably. No one had any complaint on that score. There were 180 people in the hall. He did not notice any crowd on the verandah. He did not notice P. C. Chacko coming into the hall. None had complained to him about the presence of unauthorised persons in the hall. No person was allowed into the hall without passes or the special permission of the witness. He admits that there was a deficiency of 9 votes. This is seen

from the difference between the ballot paper, account and the actual count of the ballot papers. The petitioner did not make any complaint to him. He noticed the discrepancy when Form 20 was prepared on the basis of the figures in Form 16. He says after emptying the ballot box into the tray, the box is shown to the agents to make sure that not a single ballot paper remained inside the box. After the votes were sorted and counted they were tied up as bundles of 50 each. Whenever there was a discrepancy a re-check was done by the counting supervisor. Strict instructions had been given in this matter. If discrepancy was noticed at the time of receiving the bundles at the main table on the platform with the 'check memo', the Returning Officer's assistant would enquire of the concerned counting supervisor whether a re-check was done. If not, it would be immediately ordered. This was the general instruction. Nobody complained to P. W. 15 about non-compliance with that instruction by any member of the staff. The postal votes were counted at the commencement of the counting. Everybody had been informed of the counting the postal votes as well as the verification of the doubtful votes. The doubtful votes were verified as and when they came to his table. The candidates and their agents who were seated on the platform were well aware of all that. None raised any doubt as to the correctness of his decisions. As observer of the Election. Commission was throughout present in the hall sitting next to the witness. After preparing Form 20 he enquired if anybody had a complaint. The petitioner asked for a re-count. The petitioner said that he would give his application then and there. His Chief Election Agent asked for 4 or 5 minutes to submit the written application. To this the witness agreed. Notwithstanding the narrow difference of 16 votes between the petitioner and the 1st respondent and the discrepancy of 9 votes, the witness did not think, that the request of the petitioner for recount was reasonable as, in his view, the counting was done accurately. Nobody expressed any doubt about the counting till the very end.

53. I have no reason to doubt the correctness of what is stated by the Returning Officer (P. W. 15). He categorically asserts the total absence of any disturbance or pandemonium in the counting hall. No one entered the hall without his knowledge and permission. If P. C. Chacko entered the hall it must have been no quite and brief that neither the Returning Officer nor P.W. 34 who was the counting supervisor could notice it. P. W. 39 who is an intelligence officer on duty at the relevant time saw Chacko on the Verandah, but he did not see him going into the hall. I doubt if Chacko ever entered the hall, for the evidence on the point is not uniform. I do not believe that even if Chacko came into the hall he was accompanied by a large number of persons. While the petitioner and some other interested witnesses speak of 100 persons' his own agent P. W. 35 speaks of only 50 persons. But none of them is in a position to recall their names or other particulars. The Assistant Commissioner of Police (P.W. 33) is however emphatic that Chacko's companions were only two or three and they left the hall immediately. This is probably true

and that is perhaps the reason why neither the Returning Officer (P. W. 15) nor the counting supervisor (P. W. 34) could notice the presence of Chacko and his companions. P.W. 39 also speaks of Chacko being with some companions. It cannot therefore be true that he was accompanied by any crowd as alleged by the petitioner. No disturbance whatsoever appears to have been caused in the hall on account of the presence of strangers. In this connection, I would refer to the evidence of the 1st respondent (P.W.2) on this point. He says that Chacko came to the verandah outside the hall. Seeing him, and being the President of his party, he went out and talked to him on the verandah for a few minutes. This version is equally probable.

54. P.W. 2 denies the allegation that counting was irregularily or negligently done. He says that there was perfect peace and order in the counting hall. The counting officers discharged their responsibilities most carefully. Everytime a discrepancy was noticed between the ballot paper account and the actual count, the ballot papers were re-checked. When the ballot papers were finally taken to the main table, the officer who received the bundles again enquired of the counting supervisor whether re-checking had been done when discrepancy was noticed. On all these matters he says there was no complaint from any person.

55. The above summary of the evidence discloses no pondemonium or disorder in the counting hall on the counting day. Counting commenced on time and proceeded according to the rules and in a calm and peaceful manner. There is no reliable evidence whatever of any irregularity or deliberate misitake or much less any fraud having been commited by the counting staff, except for two accidental and innocent mistakes which were immediatey corrected. The allegations of the petitioner are not only exaggerated, but totally without foundation. His apprehension about mistakes in counting and bundling is irrational and unwarranted.

In the circumstances I am of the view that the petitioner has failed to discharge the burden arising under this issue. Issue No.4 is accordingly found against the petitioner.

56. *Issue No.* 5. For the reasons which I have stated in connection with Issue No. 4 I am of the view that there was no justification for a re-count on the basis of Ext. R1. The petitioner's complaint that he was not given sufficient time to prepare his application for re-count is totally without substance. I have no reason to disbelieve the disinterested testimony of the Returning Officer (P.W.15) who says that the petitioner's Chief Election Agent asked for only four or five minutes to prepare the application for re-count. He was given that time. In the circumstances I am of the view that the petitioner had sufficient time to prepare his application. In Ext. R1 the petitioner is indeed brief and all that he says is:

> "I find that total votes in different polling booths have not tallied when they are counted. I also find that many of the invalid votes are in my favour.

I also find that some of my votes have gone to other candidates.

So I request for re-counting of votes".

Ext. R1 does not refer to the material particulars to support his complaints. He has not stated the numbers or names of the polling stations in regard to which the discrepancies arose or the counting tables at which they were noticed. He has no complaint that the votes were not re-checked at the tables where discrepancies were noticed or that his request for the same was rejected by the counting supervisors. He does not say in Ext. R1 that he had made any complaint to the counting staff or to the Returning Officer about counting or any discrepancy. His statement that some of his votes had "gone to other candidates" is indeed vague. He does not say when any where. There is no reference to the counting tables at which it happened or the polling stations from which those votes came. His reference to many invalied votes being in his favour does not make sense for, in valid votes cannot be counted in anybody's favour. On the basis of such vague request, no reasonable officer could be expected to order a re-count. On a proper consideration of Ext. R1 the Returning Officer made Ext. R2 rejecting the request for re-count. I am of the view that the officer was, in the circumstances, prefectly justified in so ordering.

57. The petitioner's consel Shri Poti submits that in view of the narrow difference between the votes secured by the returned candidate and his nearest rival, it would be necessary to order re-count of the ballot papers with a view to doing complete justice between the parties. Counsel submits that the original differnce of 16 votes now stands further reduced which shows that it is quite possible that on a re-cound of the ballot papers the petitioner would be found to have secured more votes then the 1st respondent. He refers to the allegations regarding mistakes in the counting of votes and sumbits that it is quite likely that a number of votes marked in favour of the petitioner had been deliberately or inadvertently bundled along with the votes of the 1st respondent. He says that, during the serutiny of the ballot papers by the Deputy Registrar (Judicial) in the presence of the parties and their counsel, it was quite by chance noticed by his junior counsel Shri B.V.Deepak that two votes marked in favour of the petitioner were bundled with the votes of the 1st respondent.

58. The petitioner has now filed C.M.P.No. 21286 of 1982 Praying for a re-count of the ballot papers with a view to ascertaining whether the votes of the petitioner have been mistakenly fastened in the bundles of the 1st respondent. With the C.M P. he has sworn an affidavit dated 4-10-1982 stating that, on account of the overcrowding in the hall and the speed at which counting was done, it is quite likely that mistakes have been committed by the counting staff in the bundling of votes. The petitioner also refers to the discovery of the new fact by Shri B.V.. Deepak, his junior cousel. Shri Deepak has also sworn an affidavit dated 4-10-1982 stating that, durning the scrutiny of the ballot

papers in the room of the Registrar as per order dated 1-10-1982, he noticed that two votes cast in favour of the Petitioner were tied up in the 1st respondent's bundle.

59. The petitioners request for re-count is vigorously opposed by the 1st respondent in his counter-affidavit dated 5-10-1982 His junior counsel Shri T. K. Jayaram, who was also present at the time of the scrutiny, has sworn an affidavit dated 5-10-1982 denying the assertions made by Shri B. V. Deepak. The averments of one counsel are thus controverted by those of another counsel. Referring to this assertion and denial of a fact by the parties and their counsel, Shri Warrier points out that the present prayer of the petitioner in C. M. P. No. 21286 of 1982 is in the realm of surmise and suspicion and not of evidence. The evidence con record does justify any such roving enquiry. The fact said to have been discovered during the scrutiny, he points out, was totally outside the scope of the order for scrutiny and cannot therefore be of any avail to the petitioner. He cannot rely on such a fact to sustain a prayer for re-count.

60. I have already held under Issue No. 4 that there is no substance in the petitioner's allegation that counting was done improperly or carelessly. I have pointed out that the allegationson the point are vague and the evidence unconvincing. All that is averred in the election petition is that the petitioner "might have lost several of his votes by their being bundled as the 1st respondents's votes". P.W.2 who alone speaks to it admits that when two or three votes of the petitioner accidently fell into the compartment of the 1st respondent, they were immediately retrieved. The prayer for re-count in C.M.P. No. 21286 of 1982 is now urged in the light of a new facted stated to have been accidently discovered by the petitioner's counsel duringt he scrutiny of ballot papers in terms of order dated 1-10-1982. That order contained a direction to the Deputy Registrar (Judicial) to allow the parties and their counsel to be present at the time of the scrutiny. The object of allowing them to be present at that time was to give them the necessary confidence that the order was carried out properly and strictly in terms thereof. It was not intended that any information other than what was specified or contemplated under the order would be elicited or made use of by a party or his counsel. The order was strictly limited to a single object. That was to trace the votes of the impostors with a view to discarding them in accordance with the principle stated by the Supreme Court in (1977) I.S.C.C. 396. It was not intended to embark on a roving enquiry on the basis of that order to fish out further facts. It was not its object to allow the parties or their counsel to search for materials on their own. It was certainly not inteded that the parties or their counsel would look at any other ballot papers than the ones indentified by the Deputy Registrar as those of the impostors and shown to them. To discover a fact by straying beyond what was permitted under the order and to demand a fresh enquiry on the strength of that fact is an attempt on the part of the petitioner to use the machinery of this court to search for further materials

to improve on his pleadings and evidence. This will amount to an abuse of the process of this court. I see no merit in the prayer in C. M. P. No. 21286 of 1982.

61. All this apart, even assuming that Shri Deep'aks information, which has been denied by the 1st respondent's counsel, is, on further scrutiny ascertained to be true, it would still only mean that two votes belonging to the petitioner were bundled with those of the 1st respondent. In that event the margin between the 1st respondent and the petitioner would be further reduced to 9, which by itself would not materially affect the result of the 1st respondent's election.

62. Shri Poti does not demur to this. But he says that the object of the prayer for re-count is to trace similar votes of the petitioner which might have been wrongly bundled with the votes of the 1st respondent. The fact of discovery by Shri Deepak, he says, is a pointer to the reasonableness of the petitioner's apprehension that bundling has been wrongly or irregularly done.

63. The circumstances in which the Court would be justified in ordering a re-count of the ballot papers are stated over and over again by the Supreme Court in a number of decisions. They are summarised in **Suresh Prasad Yadav v. Jai Prakash Mishra** (A.I.R. 1975 S. C. 376, 377)

"The court would be justified in ordering a recount of the ballot papers, only where:

(1) The election-petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality incounting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the Parties.

(See also A.I.R. 1966 S.C. 773; A.I.R. 1970 S.C.276 A.I.R. 1973 S.C. 215; A.I.R. 1975 S.C.283; A.I.R. 1975 S.C. 701 A.I.R. 1980 S.C. 206).

64. The petitioner ought to have stated the material particulars in the election petition to sustain a prayer for an order for re-count. Each allegation ought to have been followed by a reference to the basic facts to support it. These particulars were or ought to have been well within his knowledge when he filed the petition, if his allegations regarding the irregularities are well founded. As stated dy the Supreme Court:

"..................the election petitioner who is a defeated candidate, has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that S. 83 (1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts". (**Dr. Jagjit Singh v. Giani Kartar Singh** A. I. R. 1966 S. C. 773)

2. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition ". (**Jitendra Bahadur Singh v. Krishna Behari** (A. I. R. 1970 S. C. 276). On the allegations contained in the election petition and the evidence on record, no presumption arises in law or fact that mistake such as the one said to have been noticed by the petitiener's counsel Shri Deepak had occurred in the case of other bundless. There is no evidence whatever to substantiate the contention that there was any improper reception, refusal or rejection of any vote, apart from the votes of the impostors which have been already identified and discarded.

65. Shri Poti then refers to the discrepancy of 9 votes which he says assumes great significance in the circumstances of this case. This, according to him, is sufficient resaon for a re-count.

66. It is true that there was a total discrepancy of 9 votes arising from the defference between the ballot paper account cotained in Form 16 Part I, and the actual count.

67 Exts. R8 to R 14 are Forms 16 relating to P.S. Nos. 10, 59, 5, 62, 85, 89 and 95 respectively. In these polling stations the discrepancies indicated in Ext. P1 (Form 20) are 3, 1, 1, 1, 1, 1, and 1 respectively, thus making a total of 9 votes. P. W. 2 who was the counting agent of the petitioner at table No. 12 and P. W. 36 who was the counting agent of the 2nd respondent, at table No. 15 speak of a discrepancy of one vote each at their tables. But they are not able to say which are the polling stations in regard to which the discrepancies arose Nobodyelse speaks of any discrepancy at other tables. The only counting supervisor who was examined by the petitioner is P.W. 34 who was in charge of table No. 13. There was no discrepancy at his table. The supervisors who could have spoken to discrepancy at the counting tables have not been examined. There is no evidence that the discrepancy occurred on account of the mistakes in counting. The evidence of P.Ws. 2 and 36 is not credible. They do not state the relevant particulars.

They say they asked for a re-check when they found out the discrepancy, but the counting officers refused to comply with their request. If that was the position it is indeed strange that they did not bother to report this very important matter immediately to the petitioner or his chief election agent, although they both were present in the counting hall. Both the witnesses say that they told the petitioner about this fact only after the counting was over. The petitioner also admits that he was totally unaware of it till then. But he was in possession of all the facts when he made his application for re-count. Even so the petitioner did not mention this crucial fact in Ext. R. 1. All that he stated in it was that there was a discrepancy. He did not refer to the tables at which the discrepancies where noticed or the polling stations in regard to which the discrepancies arose. Nor did he mention in Ext. R1 that the request of the counting agents to re-check the votes was rejected by the counting officers. All this is incredible. Even more incredible is the total absence of any averment on this point in the election petition. In this connection it will be of interest to recall the evidence of the Returning Officer, P.W. 15, who says that the counting staff had clear instructions to re-check the ballot papers whenever discrepancy was noticed, and that nobody complained to him about the manner in which the counting was conducted or that the counting staff refused to re-check the discrepancy.

68. The 1st respondent's counsel Shri Warrier rightly points out that it would not be reasonable to exclude the possibility of the discrepancy having arisen from mistakes committed by the Presiding Officers in preparing the ballot paper accounts. Shri Warrier says that the petitioner has not examined the Presiding Officers who could have spoken to the accounts and how they were prepared. Their evidence would have been crucial.

69. Shri Warrier submits that Exts. R6, R10, and R11 show that mistakes could have occurred at the stage of preparing those documents. He refers to Ext. R 11 and points out certain arithmetical errors resulting in a discrepancy of one vote which is actually not a missing vote but a vote that has been properly accounted for. The errors have occurred because it was not appreciated by the Presiding Officer that when, for example, ballot papers bearing Sl. Nos. 2 to 8 are received the total received is not 8—2=6, but 7 since ballot papers bearing both Sl. Nos. 2 and 8 are also received. Similarly if ballot papers bearing Sl. Nos. 10 to 12 are unused, the total unused papers are not 12—10=2, but 10, 11, and 12, the total of which is 3. This elementary principle of arithmetic has to be borne in mind in filling up the ballot account.

70. Wherever the prescribed particulars like the Sl. Nos. are stated in the ballot paper account, it is possible to ascertain whether any error has occurred in computing the total number of ballot papers against each category. Those details are essential for that purpose.

71. Ext. E11 relating to Polling Station No. 62 shows in Column 1, "ballot papers received". The Sl. Nos are stated and the total is correctly shown as 840. These numbers are:

From	To	Total Nos.	
054348	054998	651	
055000	055179	180	840
099815	099821	9	

Under Col. 2, "ballot papers unused," the figue appear;

"(b) Without signature of	055011	055179	160	
Presiding Officer	099813	099821	8	176"

The total number of unused ballot papers bearing Sl. Nos. 055011 to 055179 is wrongly shown as 168 The total should have been 169. Similarly the total of ballot papers bearing Sl Nos. 099813 to 099821 in 9, and not 8 as wrongly shown. If these total are correct, the grand total should be 178, and not 176 as shown in Ext. R11. However Col. 4 (a), which relates to ballot papers used as tendered ballot papers, mentions one ballot paper bearing Sl. No. 099821. This means that ballot paper is wrongly mentioned under Col. 2 as an unused one. Therefore from cloumn 2 that particular number has to be excluded. If that is done, Col. 2 will be

055011 to 055179	=	169	
099813 to 099820	=	8	177

This shows that the total number of ballot papers unused is 177, and not 176 or 178. That being the position, ballot papers used at the polling mention under Col. 3 (1—2—3) is, 663, and not 664 as wrongly shown. This total figure of 663 used ballot papers includes one tendered ballot paper which would not be in the ballot box. Accordingly under Col. 5, which shows ballot papers to be found in the ballot box (3—4=5) the total votes which had to be physically accounted for at the time of counting the ballot papers emptied from the ballot box in regard to Polling Station No, 62 were 662 votes. These votes were in fact received in the counting hall. This is clear from Ext. P1. Accordingly there is no deficiency in regard to that polling station.

72. In regard to Ext. 28, relating to Polling Station No. 10 having a discrepancy of 3 votes; and Ext. R10 relating to Polling Station No. 5 having a discrepancy of 1 vote; it is not possible to verify whether Col. 2 of Form 16 showing the unused ballot papers has been correctly filled up because the Sl. Nos. are not shown. In the absence of Sl. Nos. it can not be found out whether the arithmetical error which has crept in Ext. R11 regarding Polling Station No. 62 has likewise occurred in these polling stations also. The only polling stations in relation to which proper figures are indicated are P. S. Nos. 59, 85, 89 and 95 covered by Exts. R9, R12, R13 and R14. What exactly are the mistakes concerning P. S. Nos. 10

and 5, there is no evidence, as the figures are not mentioned in their respective Form 16, viz., Exts. R8 and R10. The petitioner has not examined the concerned Presiding Officers who could have spoken to the number of ballot papers received and used at their polling stations. He has not called for Forms 16, Part II. He has not produced any evidence to exclude the possibility of arithmetical errors causing the discrepancy of 9 votes. In fact the evidence on record points to that possibility. That being the position, the petitioner has failed to discharge the burden of excluding the possibility of the discrepancy having been caused by any error than the actual counting error. In the absence of such exclusion, it is not possible for the petitioner to establish that the discrepancy was caused by loss or misplacement of votes during counting and not by any other reason. The petitioner has failed to prove that the discrepancy has been caused by reason of irregular counting. In the circumstances Shri Polt's submission that a recount would be justified by reason of the discrepancy of 9 votes has no force. In the absence of any evidence on record to support the irregularities alleged in the petition, I would not be justified in drawing any presumption which the law does not permit. To presume mistakes and order re-count when the evidence on record does not warrant it would be to allow the petitioner to embark on a roving enquiry in search of materials to get an election declared to be void. This the law does not permit. See **S. Raghbir Singh Gill v. S. Gursharan Singh Tohra** (A. I. R. 1950 S. C. 1362) and other cases cited therein. Accordingby C.N.P. No. 21286 of 1982 is dismissed. In the light of what is stated above Issue No. 5 is found against the petitioner.

73. *Issue No.* 6. None of the allegations contained in the election petition has been proved. Strong allegations such as fraud are not supported by the material particulars: nor has any serious attempt been made to prove them. The petitioner has failed to prove that the result of the election, in so far as it concerns the 1st respondent, has been materially affected by reason of in proper reception, refusal or rejection of any vote or reception of any vote which is void, or by reason of non-compliance with the law. Even after the votes cast by the imposters have been discarded and the valid tendered votes have been taken into account, the 1st respondent has still a lead of 13 votes over the petitioner. In the circumstances the petitioner is not entitled to the declaration sought.

Issue No. 6 is accordingly found against the petitioner.

74. *Issue No. 7.*—The petitioner is not entitled to any relief in this Election Petition. It is accordingly dismissed.

75. *Issue No. 8.*—The petitioner shall pay to the 1st respondent a sum of Rs. 2,000 as his costs, towards which the amount deposited by the petitioner in this Court shall be adjusted.

76. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the Speaker of the Kerala Legislative Assembly and shall thereafter sent as urgently as possible an authenticated copy of this judgment to the Election Commission, as required under Section 103 of the Representation of the People Act,1951.

(Sd.)

26th October, 1982.

T. KOCHU THOMMEN,
Judge.

Appendix

Petitioner's Exhibits:

P1 dated 20-5-1982	Certified copy of Final Result Sheet (Form 20) of No. 74 Palluruthy L. A. Constituency.
P2	Copy of Electoral Roll of ward No. 8 (Part) of No. 74, Palluruthy L.A.C.
P3 dated 19-5-1982	List of Tendered Votes of P. S. No. 81 of No. 74, Palluruthy L.A.C.
P3 (a) do.	List of Tendered Votes of P. S. No. 81 of No. 74, Palluruthy L.A.C.
P3 (b)	Used Ballot papers (No. 099899)
P3 (c)	Copy of Electoral Roll of polling Station No. 81.
P4 dated 19-5-1982	List of Tendered Votes of P. S. No. 26 of Palluruthy L. A. C.
P4 (a)	Used Ballot Paper (No. 099666)
P5	Used Ballot Paper (No. 099665)
P6	Used Ballot Paper (No. 099664)
P7	Used Ballot Paper (No. 099663)
P8	Used Ballot Paper (No. 099662)
P9 dated 19-5-1982	List of Tendered Votes of P. S. No. 9.
P9 (a)	Used Ballot Paper (No. 099568).
P10 dated 19-5-1982	List of Tendered. Votes of P. S. No. 12.
P10 (a)	Used Ballot Paper (No. 011291).
P11 (a)	Used Ballot Paper (No. 099593).
P11 dated 19-5-1982	List of Tendered Votes ot P. S. No. 14.
P12 (a)	List of Tendered Votes of P. S. No. 63.

P12 (a) dated 19-5-1982	Used Ballot Paper (No. 099855)
P13 dated 19-5-1982	List of Tendered Votes of P. S. No. 69
P13 (a)	Used Ballot Paper (No. 099857)
P13 (b)	Copy of Electoral Roll of P.S.No. 69 of No. 74, Palluruthy L.A.C.
P14 dated 19-3-1982	List of Tendered Votes of P. S. No. 20.
P15	Used Ballot Paper (No. 099633).
P16 dated 19-5-1982	List of Tendered Votes of P. S. No. 31
P17	Used Ballot Paper (No. 099684).
P18	Used Ballot Paper (No. 099594)
P19 dated 19-5-1982	List of Tendered Votes of P.S. No. 16
P20 dated 19-5-1982	List of Tendered Votes of P.S. No. 18
P20 (a)	Used Ballot Paper (No. 099619)
P21	Used Ballot Papers (No. 099618)
P22 dated 19-5-1982	List of Tendered Votes of P. S. No. 22.
P22 (a)	Used Ballot Paper (No. 099645).
P23 dated 19-5-1982	List of Tendered Votes of P.S. No. 29.
P23 (a)	Used Ballot Paper (No. 026489)
P24 dated 19-5-1982	List of Tendered Votes of P.S. No. 38.
P24 (a)	Used Ballot Paper (No. 034459).
P25 dated 19-5-1982	List of Tendered Votes of P. S. No. 43.
P25	Used Ballot Paper (No. 039027)
P26	Used Ballot Paper (No. 039026)
P27	Used Ballot Paper (No. 039025)
P28 dated 19-5-1982	List of Tendered Votes of P. S. No. 44.
P28 (a)	Used Ballot Paper (No. 099736).
P29	Used Ballot Paper (No. 099735).
P30 dated 19-5-1982	List of Tendered Votes of P. S. No. 47.
P30 (a)	Used Ballot Paper (No. 099758).
P31	Used Ballot Paper (No. 099854).
P32 dated 19-5-1982	List of Tendered Votes of P. S. No. 78.
P32 (a)	Used Ballot Paper (No. 099890).
P33 dated 19-5-1982	List of Tendered Votes of P.S. No. 98.
P33 (a)	Used Ballot Paper (No. 099991).

Respondent's Exhibits:

R1	dated 20-5-1982	Copy of petition for recounting filed by the petitioner before the Returning Officer
R2	do.	Copy of order No. EL 6342/82 of the Returning Officer, No. 74, Palluruthy L.A. Constituency.
R3		Marked copy of electoral roll of P. S. No. 68 of Palluruthy L. A. Constituency.
R4 „	19-5-1982	List of Tendered Votes of P. S. No. 39
R4 (a)		Used Ballot paper (No.099709)
R5		Marked copy of electoral roll of P.S. No. 14
R6		Marked copy of electoral roll of P.S. No. 20
R7		Copy of electoral roll of P.S.No 30 (Village Officer, Palluruthy)
R8		Ballot Paper account of Polling Station No. 10
R9		Ballot Paper account of S. No. 59
R10		Ballot Paper account of P.S. No. 5
R11		Copy of Ballot Paper account of P.S.No. 62
R12		Copy of Ballot Paper account of P.S. No. 85
R13		Copy of Ballot Paper account (Copy) of P.S. No. 89
R14		Copy of Ballot Paper account of P.S.No. 95

Court Exhibits :

C1	dated 19-8-1982	High Court Summons issued to Sri Joseph Chacko
C2	do.	High Court Summons issued to George Paily
C2 (a)	15-9-1982	Signature of George Paily on the High Court Summons
C3		Specimen signature of George Paily
C4		Thumb impression of the left thumb of PW. 38-Rosa Peter
C5		Used Ballot Papers 023186
C6		Used Ballot Papers 023269
C7		Used Ballot Papers 023391
C8		Used Ballot Papers 023367
C9		Used Ballot Paper 023250

C10	Used Ballot Paper 012277
C11	Used Ballot Paper 012650
C12	Used Ballot Paper 015878
C13	Used Ballot Paper 015923
C14	Used Ballot Paper 019736
C15	Used Ballot Paper 025725
C16	Used Ballot Paper 034036
C17	Used Ballot Paper 039110
C18	Used Ballot Paper 039341
C19	Counterfoil of used Ballot paper No. 039110
C20	Counterfoil of used Ballot Paper No. 038261
C20 (a)	Used Ballot Paper 038261
C21	Used Ballot Paper 038646
C21 (a)	Counterfoil of used Ballot Paper No. 038646
C22	Used Ballot Paper 060386
C23	Used Ballot Paper 034531
C24	Used Ballot Paper 007134
C25	Used Ballot Paper 010447
C25 (a)	Counterfoil of used Ballot Paper No. 010447
C26	Used Ballot Paper 061176
C27	Used Ballot Paper 018085
C28	Counterfoil of used Ballot Paper No. 018085
C29	Used Ballot paper No. 027599
C30	Used Ballot paper No. 014310
C31	Used Ballot paper No. 068981
C32	Used Ballot paper No. 086354
C33	Used Ballot paper No. 042290
XI	List of Tendered Votes of P. S. No. 30

Petitioner's Witness:

1. Sri Eappan Varghese (Petitions)
2. ,, V. I. Mani
3. ,, Augustine
4. ,, Chinna Joseph
5. Sugunan
6. Venkitachala Chettiar
7. Kausalya Vasu
8. Lucy Prestina
9. Kuttan Nair
10. Summy Abel
11. Xavier Joseph
12. Chacko Joseph

13. Sebastin Rapheal
14. K. V. John
15. A. K. Appootty, Returning Officer
16. Kodhu Thressia Goerge
17. T. K. Dinesan
18. Thressia Jacob
19. Annie Joseph
20. Joseph Chacko
21. Joseph Joseph
22. Xavier Augustine
23. Jainy Hassan
24. Subaida Khalid
25. Gopalan Ittaman
26. Antony Xavier
27. Masthan Khan Usankhan
28. Sobhan Viswanathan
29. Salila Ramachandran
30. Sumathy
31. Peter Franklin
32. George Paily
33. M. M. Abdul Rahiman
34. P. R. Augustine
35. Peter
36. K. B. Modammed Kutty
37. Bava Kunju Sainaba
38. Rosa Peter
39. Thomas Jeorge
40. Joseph Daniel D'Souza.

Respondent's Witness:

1. Aysha Saidu
2. T. P. Peethambaran Master, 1st Respondent.

....

Costs to the 1st Respondent Rs. 2,000

By order,

(Sd.)

V. K. Rao,

Under Secretary to the Election Commission of India.

Kerala Gazette No. 17 dated 26th April 1983.
PART I A.

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 1156/EL.3/83/Elec. *Dated, Trivandrum, 26th March* 1983.

The following order No. 76/KL/82 (39 to 95) dated 7th February 1983/18th Magha 1904 (Saka) of the Election Commission of India is hereby published.

By order,

J. S. Jesudhasan,
Chief Electoral Officer and
Special Secretary to Government.

ELECTION COMMISSION OF INDIA

Ashok Road,
New Delhi-1.

No. 76/KL/82 (39 to 95) *Dated, the 7th February*, 1983.
18th Magha, 1904 *(Saka)*

ORDER

Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses, within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No. & Name of the Assembly Constituency	Name of the Contesting candidate	Reason for disqualification
(1)	(2)	(3)	(4)	(5)
1	General Election to Kerala Legislative Assembly, 1982	20—Sultan's Battery	Shri Devan Podiyan, Parackal House, P.O. Perikkalloor, Wynad District, Kerala	Failed to lodge the account of election expenses in the manner required by law.
2	Do.	29—Kalpetta	Shri Korenkunnel Kunhabdulla Haji, Advocate, Tharurana, District Wynad, Kerala	do.
3	Do.	do.	Shri K. P. Moideen, Aduvadi House, P.O. Muttil, District Wynad, Kerala	do.
4	Do.	99—Mararikulam	Sri A. R. Vijaya Panicker, Azeekal Veedu, P.O. Varanod Chenganda Sherttallai, District Alleppey, Kerala	Failed to lodge any account of election expenses as required by law.

5	Do.	110—Pandalam (SC)	Shri K. Madhavan, Puthumangalath, Pallana P. O., Thrikkunnapuzha, District Alleppey, Kerala	do.
6	Do.	125—Eravipuram	Shri A Aliyaru Kunju, Colony Veedu, Thattamala P. O., Quilon District, Kerala	Failed to lodge the account of election expenses within the time and in the manner required by law.
7	Do.	108—Chengannur	Shri M. N. Easo, Kochu hiseril, Angadickal, Puthencau, P.O. Chengannoor, District Alleppey, Kerala	Failed to lodge any account of election expenses as required by law.
8	Do.	do.	Shri Ramachandran Pillai, Renukabhavan, P.O. Thiruvanvandoor, Thiruvalla-9, District Alleppey, Kerala	do.
9	Do.	107—Aranmula	Shri M. I Eappen, Mamoottil House, Karikuzhi P O., Thalavadi, District Alleppey, Kerala	do.

(1)	(2)	(3)	(4)	(5)
10	General Election to Kerala Legislative Assembly, 1982	107—Aranmula	Shri Gopinatha Pilla, Kochanju Pilla, Pazhavam Manuil Patinjattethil, Edayaranmula P.O., District Alleppey, Kerala	Faild to lodge any account of election expenses as required by law
11	Do.	do.	Shri M. K. Mohanan, Block No. 41, Ezheekkadu Harijan Colony, Kuruchimuttom P.O., Edayarnmula, District Alleppey, Kerala	do.
12	Do.	40—Kuttippuram	Shri T. K. Ahamed, Thonikadavath House, Kuttippuram, District Malappuram, Kerala	Failed to lodge the account of election expenses in the manner required by law
13	Do.	32—Nilambur	Shri Maveli Acheethan, Munderi P. O., Chungathara, District Malappuram, Kerala	Failed to lodge any account of election expenses as required by law
14	Do.	32—Nilambur	Shri Parangat Imbichi Bava, Parangat House, Nallamthanni P.O., District Malappuram, Kerala	Failed to lodge any account of election expenses as required by law

15	Do.	do.	Shri Ulahannan Varkey, Kannankari, P.O., Manimooli. District Malappuram, Kerala	Failed to lodge the account of election expenses within the time and in the manner required by law
16	Do.	31—Wandoor (SC)	Shri K. Gopalan, P.O. Wandoor, District Malappuram, Kerala	Failed to lodge any account of election expenses as required by law
17	Do.	36—Tirurangadi	Shri Machiyath Balakrishnan Nair, Trikulam P. O., Tirurangadi, District Malappuram, Kerala	do.
18	Do.	39—Ponnani	Shri T. P. Subrahmanniam, Thekkoot Parambil House, P. O. Nannamukku South, District Malappuram, Kerala	Failed to lodge the account of election expenses in the manner required by law
19	Do,	38—Tirur	Shri Kizhedath Sukumara Menon, Kizhedath House, P.O. Pookayil Bazar, Tirur-7 Kerala	do.
20	Do.	62—Mala	Shri K. Sankarankutty, Koottali Veedu, P. O. Meladoor, District Trichur, Kerala	Failed to lodge any account of election expenses as required by law

(1)	(2)	(3)	(4)	(5)
21	General Election to Kerala Legislative Assembly 1982	63—Irinjalakuda	Shri P. C. Unnikrishnan, Puthuru Veedu, Thaliyakkonam Madayikkonam Trichur District Kerala	Failed to lodge any account of election expenses as required by law
22	Do.	do.	Shri V. Raghavan Pillai, Valiyaveethil Veedu, Irinjalakkuda, Trichur District Kerala	Failed to lodge the account of election expenses in the manner required by law
23	Do.	2—Kasaragod	Shri Abdulla Mallath, S/o Mammunhi, Muliyar Village & Post, District Cannanore, Kerala Pin-670542	Failed to lodge account of election expenses in the manner required by law
24	Do.	56—Kunnamkulam	Shri Koonan Simon, Kollunn r House, Via Porkulam, Trichur District, Kerala	Failed to lodge any account of election expenses as required by law
25	Do.	16—North Wynad (S.T.)	Shri A. C. Palkan, Adumarikunnu Vemom, P. O. Payyampally, District Wynad, Kerala	Failed to lodge account of election expenses required by law

26	Do.	34—Malappuram	Advocate Manjeri, Narayanan, Advocate, P.O. Nanjeri District Malapuram, Kerala	Failed to lodge any account of election expenses in the manner required by law
27	Do.	105—Thiruvalla	Shri Kuttan Pillai Kunjan Pillai, Kaluriparampil, Thukalasseri, Thiruvalla, District Alleppey, Kerala	do.
28	Do.	105—Thiruvalla	Shri George Isac, Ezholikkal, Aniocdu P.O. Mallappally, District Alleppey, Kerala	Failed to lodge any account of election expenses as required by law
29	Do.	104—Kayamkulam	Shri A. Gopalan Chettiar, Pillaveedu, Cheravally, Kayamkulam, Alleppey District, Kerala	Failed to lodge the account of election expenses in the manner required by law
30	Do.	58—Trichur	Shri P. Mohanan, Pararu House, P. O Avinissery (via) Ollur, Trichur, Kerala	do.

(1)	(2)	(3)	(4)	(5)
31	General election to Kerala Legislation Assembly 1982	58—Trichur	Advocate Jose K. Jones, Kattukaran House, Trichur-4 Kerala	Failed to lodge the account of election expenses in the manner required by law
32	Do.	6—Irikkur	Shri Zacharias Kurisummotil, Kurisummotil House, P.O. Alakode, District Cannanore, Kerala	Failed to lodge the account of election expenses within the time and in the manner required by law
33	Do.	do.	Shri K. Mohammed, Kolakalathil House, P.O. Alakode, District Cannanore, Kerala	do.
34	Do.	106—Kalloopara	Shri Abraham Thomas, Muringasserril, Mulayakunnathu, Iraviperoor District Alleppey, Kerala	Failed to lodge any account of election expenses as required by law
35	Do.	do.	Shri Kochoonju Mylan, Kozhimala Puthenpura, Kozhimala P.O. District Alleppey, Kerala	do.
36	Do.	do.	Shri Raman Kunju Kunju, Kanjira Kunnil Kaviyoor District Alleppey, Kerala	do.

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37	Do.	37—Tanur	Shri Ponnakkampattu Veerabhadran, P.O. Panagattur Tanur, District Malappuram, (Kerala)	do.
38	Do.	60—Kodakara	Shri V. K. Subramanian, Vazhavalappan House, P.O. Perambra, District Trichur (Kerala)	Failed to lodge the account of election expenses within the time and in the manner required by law.
39	Do.	16—North Wynad (ST)	Shri M. Chandu, Edamana Puthenmuttathu Veedu, Varayal, P. O. Kambatty, District Wynad (Kerala)	Failed to lodge any account of election expenses as required by law.
40	Do.	67—Kodungallur	Shri M. A. Sadanandan, S/o Appu, Madathingal House Chthedathparambu, Kodungallur, District Trichur (Kerala)	Failed to lodge the account of election expenses within the time and in the manner required by law.
41	Do.	do.	Shri K. H. Muhammed, S/o Hydrose, Kumbalath House, Edavilang, District Trichur (Kerala)	Failed to lodge any account of election expenses as required by law.

(1)	(2)	(3)	(4)	(5)
42	General Election to Kerala Legislative Assembly, 1982	Kodungallur	Shri P. V. Vijayan, S/o Velayudhan, Puthunelath House, P.O. Kara, Kathiyalam, Edavilang, Kodungallur, District Trichur (Kerala)	Failed to lodge the account of election expenses in the manner required by law.
43	Do.	44—Pattambi	Shri M. Viswanathan, Malayil House, P.O. Naduvattom via Pattambi, District Palghat (Kerala)	Failed to lodge any account of election expenses as required by law.
44	Do.	45—Ottapalam	Shri G. P. Mohan, Sri Vihar, Ottapalam-I, District Palghat (Kerala)	Failed to lodge the account of election expenses in the manner required by law.
45	Do.	do.	Shri P. G. Radhakrishnan, Parekalathil House, Chuduvalthur, P. O. Shoranur, District Palghat (Kerala)	Failed to lodge any account of election expenses as required by law.
46	Do.	47—Mannarkkad	Shri K. Sankaran, Kallammala, P.O. Pottasseri, District Palghat (Kerala)	Failed to lodge any account of election expenses as required by law.

47	Do.	do.	Shri Immanuel Jacob, Verumkal, P. O. Thachampara District Palghat (Kerala)	do.
48	Do.	do.	Shri K. K. Kakki. Ommala, P. O. Jellipara, District Palghat (Kerala)	Failed to lodge the account of election expenses within the time and in the manner required by law.
49	Do.	50—Chittur	Shri K. N. Muhammed Ibrahim, Challapiravu, Kozhinjanpara P.O. Chittur Taluk, (Kerala)	Failed to lodge any account of election expenses as required by law.
50	Do.	59—Ollur	Shri M. K. Philipose, Manikuttiyil House, Chettikad P. O., Kundukad, Kerala.	Failed to lodge the account of election expenses within the time and in the manner required by law.
51	Do.	54—Chelakara (SC)	Shri Ayyappan, (A.A.T. Varappuzha), A.A.T. Varappuzha, Karthika Bhavan, P.O. Varappuzha, District Trichur (Kerala)	do.

(1)	(2)	(3)	(4)	(5)
52	General Election to Kerala Legislative Assembly 1982	53—Alathur	Shri C. A. Karim Sahib, S/o Chvully Rawther, Marehane, Alathur, (Kerala)	Failed to lodge the account of election expenses within the manner required by law.
53	Do.	do.	Shri K. Sankaran, S/o Koppan, Muthalakulam, Harijan Colony, P. O. Kavassery, Alathur Taluk, (Kerala)	do.
54	Do.	do.	Shri K. K. M. Shafeek, S/o M. M. Maulavi, Mudappallur P. O. Alathur Taluk, District Palghat, Kerala	Failed to lodge the account of election expenses in the manner required by law.
55	Do.	do.	Shri C. K. Saithali, S/o Kassi Rorother, Kallathani House, Chettalancherry P.O., (Kerala)	do.
56	Do.	do.	Shri Bhaskaran, S/o Chinnan, Kavilathupadam, Chiltalamcharry P.O., Alathur Taluk, Kerala	Failed to lodge any account of election expenses as required by law.

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57	Do.	52—Coyalmannam (SC)	Shri P. Thayankan, S/o Parhani, Kuttakkad Harijan Colony Koyalmannam, District Palghat, (Kerala)	Failed to lodge the account of election expenses in the manner required by law.

By order,

(Sd.)

V K. RAO,

Under Secretary to the Election Commission of India.